

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 22, 2005

Cancellation No. 92043900

Omnova Solutions, Inc.

v.

DIE GEM CO., INC., THE

David Mermelstein, Attorney:

This proceeding was instituted on November 22, 2004. Pursuant to standard Board practice, the institution letter and petition for cancellation were mailed to respondent Die Gem Co., at its address of record. Respondent was allowed forty days in which to answer the petition for cancellation.

No answer having been received, on February 17, 2004, the Board issued notice of default to respondent, and allowed it thirty days in which to show why judgment by default should not be entered against it. Unfortunately, as later became clear, the envelope sent to respondent did not contain respondent's copy of the notice of default, but rather a paper from an unrelated proceeding, Opposition No. 91163116. The *pro se* respondent wrote to the Board (using

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proceeding number 91163116), indicating its confusion and requesting assistance, but the Board did not respond.¹

Meanwhile, because respondent had not filed a response to the notice of default, the Board entered judgment by default against respondent on March 25, 2005. Respondent's registration was cancelled on April 20, 2005.

On April 4, 2005, respondent submitted a paper to the Board styled a "motion to quash," explaining that it never received the notice of default, and requesting additional time to respond to the petition for cancellation.²

Because the notice of default was not mailed to the respondent, the judgment by default entered against respondent is hereby VACATED. Registration No. 1384270 will be reinstated forthwith.³

In light of the circumstances, respondent is allowed until FORTY DAYS from the mailing date of this order in which to answer the petition for cancellation.

Finally, we note that respondent is - at least at this point - representing itself in this proceeding. While

¹ Respondent's letter remains in the prosecution history of Opposition No. 91163116 at item #9.

² Judgment was entered a mere 36 days after entry of the notice of default. It is the Board's usual policy to wait longer than six days after a due date before taking action, so that we may be assured of receiving responses which have been submitted by mail. Had the Board followed its policy in this case, respondent's paper would have alerted the Board to its error prior to entry of judgment and cancellation of respondent's registration.

³ The Board apologizes to respondent for the errors resulting in entry of judgment and cancellation of its registration.

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parties are permitted to represent themselves before the Trademark Trial and Appeal Board, it should be noted that these proceedings are legal in nature. These proceedings are governed, *inter alia*, by the Trademark Act, the Trademark Rules, the Federal Rules of Civil Procedure, and many cases interpreting the applicable rules and statutes. As a result, most parties find representation by qualified counsel to be essential to a successful presentation of their case. Board personnel cannot provide legal advice to either party, or assist respondent in selecting an attorney.

Trial dates, including the close of discovery, are reset as follows:

DISCOVERY PERIOD TO CLOSE:	October 19, 2005
Thirty-day testimony period for party in position of plaintiff to close:	January 17, 2006
Thirty-day testimony period for party in position of defendant to close:	March 18, 2006
Fifteen-day rebuttal testimony period to close:	May 2, 2006

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

***By the Trademark Trial
and Appeal Board***